IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1816 OF 2002

IN

SUIT NO. 2502 OF 1988

Rajendra Chunilal Mehta
& Anr. .. Plaintiffs.

vs.

Smt. Chandrakala Gautamchand
& Ors. .. Defendants.

Mr. Burges Colabawala a/w. Raju Gawade i/by K. Asher & Co. for the plaintiffs.

Mr. Arif Bookwala i/by Madekar & Co. for defendant no. 1 (g).

Mr. J.P. Sen i/by A.G. Shah for defendant nos. 2 & 3.

Mr. V.S. Parab, Asstt. Court Receiver (Adm) for Court Receiver.

CORAM: S.U.KAMDAR, J.

DATE : 29th September, 2005.

P.C.

. The present notice of motion pertains to three premises bearing nos. 8, 9 and 14 situate on 3rd floor of Mehta House, 36, Pandita Ramabai Road, Chowpatty, Mumbai 400 007. The admitted facts in

the present case are :-

2. That the original owner of the said three premises is one partnership firm known as Bharat Kumar & Co. The said Bharat Kumar & Company has given the said premises on tenancy to one Kesriyaji Trading Company. The said Kesriyaji Trading Company thereafter sub-let the said premises to the State Bank of India and a sub-lease was executed by and between Kesriyaji Trading Company and State Bank of India. The State Bank of India has surrendered the said premises. At present, the Court Receiver, High Court, Bombay is in possession of the said premises pursuant to the order passed in Chamber Summons No. 185 of 1998 dated 29.4.2002.

3. The learned counsel appearing for the plaintiffs submits that on surrender of the said sub-lease by the State Bank of India the premises cannot revert back to the said Kesriyaji Trading Company who had sub-let the same and even assuming that the said premises revert back to Kesriyaji Trading Company as a tenant then in that event also the defendant nos. 1 (G) who is the legal representative and legal heir of the deceased defendant no. 1 is entitled to the share therein and, therefore, his share is required to be protected till the hearing and final disposal of the suit.

4. It has been further contended that if on sub-lease being granted the right of Kesriyaji Trading Company of a tenancy in respect of the said premises comes to an end then in that event on surrender of the suit premises it must revert back to the original owner Bharat Kumar & Co.

5. The present suit is filed, inter alia, seeking various reliefs including for enforcement of an temporary arrangement arrived at by and between the parties. The Bharat Kumar & Co. as well as the firm of Kesriyaji Trading Company are both subject matter of the family arrangement which is the subject matter of the present suit. Under the family arrangement Bharat Kumar & Co. goes to the share of the defendants nos. 2 and 3. However, the defendants nos. 2 and 3 are disputing the validity or otherwise of the said arrangement and thus they are not claiming the right, title and interest in the said Bharat Kumar & Co. In so far as Kesriyaji Trading Company is concerned, the said firm also goes to the share of the defendants nos. 2 and 3 under the said family arrangement. Thus both the companies namely the owner of the properties as well as tenants thereof goes to the share of the defendants nos. 2 and 3. However, it is the case of the defendant nos. 2 and 3 that the premises being nos. 8, 9 and 14 which are situated on 3rd

floor of Mehta House is not the subject matter of the present suit. It has been contended that the plaint as framed does not include the said premises and, therefore, no relief can be granted at the interim stage in respect of the premises which are not forming part of the suit. The learned counsel appearing for the defendants nos. 2 and 3 has also taken me through the various exhibits under which the joint family properties are distributed to various persons and/or entities to indicate that the said premises do not form part of the said family arrangement. However, it is not in dispute that the firm Bharat Kumar & Co. and Kesriyaji Trading Co. both are subject matter of the distribution in the family arrangement which is the subject matter of the suit. I am of the opinion that once the firm which is the owner of the property and another property which is a tenant thereof both form part of the family arrangement then consequently the said property also forms part of the subject matter of the family arrangement and consequently the subject matter of the suit.

6. It has been thereafter contended by the learned counsel for the defendants nos. 2 and 3 that since there is no final relief is sought in respect of the said three premises namely 8, 9 and 14 in the said suit, no interim relief can be granted. The answer to the said contention lies in

the very first proposition that first if the firms themselves are subject matter of the family arrangement and its distribution is also a subject matter of family arrangement then obviously the distribution of the firms cannot be dehors of its assets and liabilities under the said family arrangement and, therefore, in my opinion premises nos. 8, 9 and 14 forms the part of the subject matter of the suit as well as subject matter of the final relief in the present suit.

7. Thereafter, the learned counsel for the defendants nos. 2 and 3 has contended that the original defendant no. 1 was Chunilal Harakmal Mehta. He was sued in his individual capacity and he was a partner of Kesriyaji Trading Co. in his individual capacity. However, the learned counsel for the plaintiffs contends that the said firm of Kesariyaji Trading Company was represented by Chunilal Mehta as a Karta of Chunilal Mehta HUF and thus the co-parceners including defendant no. 1 (G) were entitled to interest in the said firm. The premises being 8, 9 and 14 being part of the said family arrangement and in which the defendant nos. 1 (G) has an interest, according to the plaintiffs, the said property is required to be protected. I am of the opinion that the issue whether defendant no. 1 (G) could be acquiring any right, title and interest in the said property through HUF in

Kesariyaji Trading Company is the issue to be determined at the final hearing of the suit. It is not possible to hold that in respect of the properties being premises nos. 8,9 and 14 though the same forms part of the assets of Kesariyaji Trading Company, a partnership firm, as a tenant and that of Bharat Kumar & Co. as an owner thereof still the said properties should be deleted from the array of the suit at this stage and that the rights of the defendant no. 1 (G) if any should not be permitted to be adjudicated at the final hearing of the suit. The issue that whether the defendant no. 1 (G) has any right, title and interest in the said property or on a failure of the suit whether the family arrangement still survives and if not, how the distribution and division of the firm M/s. Bharat Kumar & Company and M/s. Kesariyaji Trading Company is at large which will have to be then determined depending upon the consequence or result of the suit. Till the said issues which are raised in the present suit can be finally determined, I am of the opinion that the properties being premises nos. 8, 9 and 14 are required to be protected and the contention of the defendants that the Receiver should be discharged at this stage and the property should be permitted to be handed over to the defendants nos. 2 and 3 without any condition in respect thereof cannot be accepted at the interim stage. At the interim stage, the rights of the

parties cannot be finally determined. It can only be determined at the final hearing of the suit. I am also of the opinion that it is not possible to hold that the defendant no. 1 (G) has no right whatsoever in M/s. Kesariyaji Trading Co. and as a consequence of the dismissal of the suit or otherwise defendant nos. 2 and 3 would be absolutely entitled to the said premises. In that view of the matter, I am of the opinion that the order passed by the learned Single Judge dated 29.4.2002 in Chamber Summons No. 185 of 1998 is required to be continued. However, the said premises are lying locked in the custody of the Court Receiver. The premises which are lying locked would serve no purpose of any of the parties in the present suit. In that view of the matter I direct the Court Receiver, High Court, Bombay to invite bids from the persons to be appointed as agent of the Court Receiver in respect of the said premises being premises nos. 8, 9 and 14. It is made clear that the parties to the present suit will be at liberty to bid at the said bidding by the Court Receiver. The Court Receiver will however, appoint the highest bidder as his agent in respect of the said premises. In an event, if the parties to the suit succeeds in the bid, they will be entitled to be appointed as agent without security but on condition of payment of royalty which will be fixed by the Court Receiver. However, if any third party

is appointed as an agent of the Court Receiver, then the Court Receiver will also take appropriate security in respect of the said premises from such third party bidder. The Receiver will appoint the agent on usual terms and conditions as mentioned hereinabove. In that view of the matter, I dispose of Notice of Motion No. 1816 of 2002 accordingly. However, there shall be no order as to costs.

7. The learned counsel for defendant nos. 2 and 3 applies for stay of this order. Application for stay rejected.